



83-SBE-087

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
GABRIELA MENDOSA)

For Appellant: Gabriela Mendosa,
in pro. per.

For Respondent: Mark McEvilly
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Gabriela Mendosa against a proposed assessment of additional personal income tax in the amount of \$178.50 for the year 1979.

Appeal of Gabriela Mendosa

The issue presented by this appeal is whether appellant qualified to file her personal income tax return as a head of household for 1979.

Appellant filed her 1979 California personal income tax return as a head of household, claiming her son as the qualifying dependent. In answer to respondent's request for information, appellant stated that her husband lived with her and her son from February 9 to the end of 1979. Later, she stated that her husband lived with her until the end of January 1979, when he moved out of her residence.

Respondent determined that appellant did not qualify as a head of household and issued a proposed assessment reflecting the change of filing status. After considering appellant's protest, respondent affirmed the proposed assessment, and this timely appeal followed.

In order to qualify as a head of household, the taxpayer must, in addition to other requirements, be unmarried at the end of the taxable year. (Rev. & Tax. Code, § 17042.) A taxpayer is considered unmarried if he is either separated from his spouse, and the separation is evidenced by a final decree of divorce or a decree of separate maintenance, or if he and his spouse lived apart during the entire taxable year.. (Appeal of Charley Hurst, Cal. St. Bd. of Equal., May 4, 1978; Cal. Admin. Code, tit. 18, reg. 17042~17043, subds. (a)- & (d) (Repealer filed Dec. 23, 1981, Reg. 81, No. 52).)

The record contains no evidence to indicate that appellant and her husband were separated pursuant to either a final decree of divorce or a decree of separate maintenance during 1979. Therefore, appellant would qualify as a head of household only if her husband did not physically occupy her household during any part of 1979. Since the record indicates that her husband did live with appellant for part of 1979, appellant was not qualified as a head of household. Appellant contends that she was qualified because her husband did not contribute financially to her household during 1979, but there is nothing in the statute to support this position. Consequently, we must sustain respondent's action.

Appeal of Gabriela Mendosa

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED; ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Gabriela Mendosa against a proposed assessment of additional personal income tax in the amount of \$178.50 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present..

<u>William M. Bennett</u>	, Chairman
<u>Conway If. Collis</u>	, Member
<u>Ernest J. Dronenburg, Jr.-</u>	, Member
<u>Richard Nevins</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code Section 7.9